

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re:

Amendment of Section 73.622(i)  
Post-Transition Table of DTV Allotments,  
Television Broadcast Stations.  
(Kalispell, Montana)

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MB Docket No. 11-20  
RM-11619

FILED/ACCEPTED

MAR 25 2011

To: Office of the Secretary, FCC  
Attn: Chief, Video Division, Media Bureau

Federal Communications Commission  
Office of the Secretary

**COMMENTS IN SUPPORT OF RULEMAKING**

Montana State University ("MSU"), by its counsel, hereby comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding to transfer channel \*46, Kalispell, Montana to the Post-Transition Table of DTV Allotments (the "Post-Transition Table"). As explained in the NPRM, channel \*46 at Kalispell already was allotted in the Pre-Transition Table of DTV Allotments (the "Pre-Transition Table"), and MSU initiated this proceeding to transfer the allotment to the Post-Transition Table. MSU reaffirms its full support for the proposed rulemaking and respectfully submits that approval will further the public interest greatly. Upon approval of the proposal, MSU intends to construct the new station expeditiously.

**Background.** MSU is a public institution of higher education in the state of Montana and the licensee of noncommercial educational digital television station KUSM-TV, Bozeman, Montana. For more than twenty-five years, MSU has operated KUSM-TV in furtherance of its educational mission by broadcasting high-quality educational, informational and cultural programming, including children's programming, locally-produced programming, and PBS

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offerings. Beginning in 2004, MSU sought to expand noncommercial broadcast service to underserved areas in Montana, and, as part of those efforts, filed a Petition for Rulemaking to add a digital television allotment for Kalispell. The Commission concluded that the allotment would serve the public interest and added it to the Pre-Transition Table.<sup>1</sup> When the Commission opened a filing window for the new noncommercial station at Kalispell,<sup>2</sup> MSU and another party submitted competing applications.<sup>3</sup>

The two parties eventually resolved the conflict between their mutually exclusive applications and submitted a Joint Request for Approval of Settlement Agreement proposing grant of MSU's Kalispell Application and dismissal of the other application.<sup>4</sup> However, this settlement was not reached until after the conclusion of the DTV transition and the implementation of the Post-Transition Table, which accordingly did not include the Kalispell allotment.<sup>5</sup> After the Kalispell Application became ripe for grant in connection with the

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<sup>1</sup> Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kalispell, Montana), *Report and Order*, 19 FCC Rcd 23149 (Vid. Div. 2004).

<sup>2</sup> Filing Window for New Digital Noncommercial Educational Reserved Channel Television Stations for Channel \*46 at Kalispell, Montana; Channel \*21 at Great Falls, Montana; and Channel \*16 at Billings, Montana, *Public Notice*, 21 FCC Rcd 7183 (MB 2006).

<sup>3</sup> See FCC File Nos. BNPEDT-20060809AJQ (the "Kalispell Application"), BNPEDT-20060810ABD. As noted in the NPRM, the applicants did not have an opportunity to request that the applied-for channel be allotted for post-transition use.

<sup>4</sup> Flathead Adventist Radio Network, Inc. & Bd. of Regents of the Mt. Univ. Sys., *Joint Request for Approval of Settlement Agreement*, FCC File Nos. BNPEDT-20060809AJQ, BNPEDT-20060810ABD (filed Sept. 18, 2009).

<sup>5</sup> Under its articulated policy, the Commission transferred to the Post-Transition Table only those allotments in the Pre-Transition Table for which it already had issued associated construction permits or licenses. Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 03-15, *Report and Order*, 19 FCC Rcd 18279, ¶ 66 (2004). The Kalispell Application was pending in 2007, such that its channel \*46 allotment was not transferred at that time.

settlement, MSU initiated the instant proceeding to transfer the existing Kalispell allotment from the Pre-Transition Table to the Post-Transition Table.

**Comments In Support Of Rulemaking.** As explained in MSU's Petition for Rulemaking (the "Petition") in this docket, the transfer of the Kalispell allotment to the Post-Transition Table would serve the public interest by eliminating a substantial noncommercial educational white area and providing the community of Kalispell with its first local noncommercial educational broadcast television service.

***A. The proposed channel \*46 allotment to the post-transition table would provide the presently unserved area of Kalispell with a valuable source of noncommercial educational programming.***

There is presently no noncommercial educational DTV station serving Kalispell, Montana. In 2004, the Commission intended for the DTV channel \*46 allotment to become the community's first and only noncommercial educational digital television facility, but this goal has yet to be achieved because the Commission could not grant the Kalispell Application before the end of the DTV transition while a competing application also remained pending. The inclusion of the proposed allotment in the Post-Transition Table will allow for grant of a permit and pave the way for MSU's intended construction of the new facilities, allowing for prompt commencement of its high-quality mix of local and PBS programming for the affected rural and unserved areas. In fact, as detailed in MSU's original 2004 Petition for Rulemaking, one hundred percent (100%) of the 143,020 persons within the proposed service area do not receive any over-the-air noncommercial educational TV service.<sup>6</sup>

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<sup>6</sup> See *Petition for Rulemaking*, Montana State University, MB Dkt. No. 04-283 (submitted Mar. 24, 2004).

As noted in the Petition, Montana was the very last state to obtain its own PBS member station when MSU's flagship station KUSM-TV launched in 1984. Since then, its state-wide network of PBS member stations has grown slowly but steadily. Despite its geographic size, Montana could claim only two PBS member stations before MSU stations KBGS-TV and KUGF(TV) signed on in 2009 and 2010, respectively.

The Communications Act supports Commission action to fill this noncommercial void in Montana:

It is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies.<sup>7</sup>

Instituting the proposed rulemaking and granting the Kalispell Application would help to achieve that goal. By providing a first noncommercial service to Kalispell and to one hundred percent of the population within the proposed service area, the proposed facilities would eliminate a substantial noncommercial white area in furtherance of the intent of Congress. Notably, MSU remains committed to providing the type of high quality, local programming that the Commission has long expected from noncommercial, educational stations.<sup>8</sup> MSU currently broadcasts several critically acclaimed, locally-produced programs focused on Montana issues, in addition to PBS programs and children's programming.<sup>9</sup> The Kalispell station will allow

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<sup>7</sup> 47 U.S.C. § 396(a)(9).

<sup>8</sup> See, e.g., *Educational TV Assignment at Terre Haute, Indiana*, 19 RR 2d 1850, 1853 (1970) ("We have repeatedly announced our policy to forward local programming in the broadcast services. Local programming is essential particularly in the field of education in that local programming can most effectively deal with the specific problems, needs, and interests in the community being served.").

<sup>9</sup> See, e.g., <http://www.montanapbs.org/Montana/>.

MSU to expand this service to even more residents. Following grant, MSU commits to constructing the new facility promptly and bring its high-quality educational programming to the more than 140,000 presently unserved viewers in Kalispell and surrounding areas of northwest Montana.

***B. The channel \*46 Kalispell allotment is not a “new” allotment because it was previously approved and already present in the Pre-Transition Table.***

The proposed rulemaking does not disadvantage any other spectrum users by creating a “new” allotment. The allotment was already approved by the Commission and exists in the Pre-Transition Table,<sup>10</sup> and its transfer to the Post-Transition Table would reflect implementation of the exact same process completed for other broadcast television stations.<sup>11</sup> As a result, transitioning the Kalispell allotment to the Post-Transition Table would not prejudice any other party. In particular, the proposed rulemaking would not compromise any of the Commission’s goals set forth in its National Broadband Plan.<sup>12</sup> Kalispell is located far from major markets and is terrain shielded in large part by the Rocky Mountains. It is almost 400 miles from the closest top-fifty market in Seattle, Washington. It is more than 325 miles from Boise, Idaho and 435 miles from Portland, Oregon. Denver, Colorado is almost 750 miles to the south.

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<sup>10</sup> See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kalispell, Montana), *Report and Order*, 19 FCC Rcd 23149 (Vid. Div. 2004).

<sup>11</sup> Likewise, as explained in the Petition and supported by the Commission’s issuance of the NPRM, the transfer of the allotment to the Post-Transition Table may be accomplished without waiver of the freeze on new DTV allotments, just as was done for other broadcast television stations.

<sup>12</sup> See National Broadband Plan, released Mar. 16, 2010.

***C. In addition to furthering Congressional mandates, the channel \*46 Kalispell allotment would advance Commission policies by facilitating preservation and activation of much needed reserved channel noncommercial television.***

The Commission already has declared that providing new noncommercial educational television service to Kalispell is in the public interest,<sup>13</sup> and implementation of the proposed rulemaking would further the Congressional mandate in Section 396(a)(9) of the Communications Act “to ensure that all citizens of the United States have access to public telecommunications services.” The transfer of the allotment to the Post-Transition Table would directly address and eliminate a substantial noncommercial white area that currently exists in rural northwest Montana. At the same time, the rulemaking would further the Commission’s longstanding policy favoring the activation of vacant NCE allotments<sup>14</sup> and make possible the enhanced provision of noncommercial and educational programs in the Kalispell area. Anything other than the prompt implementation of the proposed rulemaking would amount to deletion of the sole noncommercial allotment in northwest Montana, in contradiction of decades of Commission precedent.<sup>15</sup>

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<sup>13</sup> Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Kalispell, Montana), *Report and Order*, 19 FCC Rcd 23149 (Vid. Div. 2004).

<sup>14</sup> See e.g., *Montrose and Scranton, Pennsylvania*, 68 RR2d 702 (1990).

<sup>15</sup> Commission policy clearly mandates the preservation of educational channels for their intended use, and the Commission is reluctant to delete a reserved channel. See, e.g., *Television Channel Assignments*, 60 RR2d 784 (1986). Even when the reserved channel is not in use, the Commission has refused to delete the allotment. *Ogden, Utah*, 42 Fed. Reg. 40302 (1977).

**Conclusion.** For all of these reasons, MSU strongly supports the Commission's proposed rulemaking to transfer the noncommercial channel \*46, Kalispell allotment to the Post-Transition Table of DTV Allotments in Section 73.622(i) of its Rules.

Respectfully submitted,

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March 25, 2011

## CERTIFICATE OF SERVICE

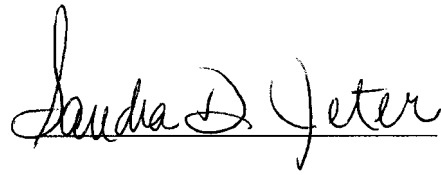
I hereby certify that on this 25th day of March 2011, I caused a copy of the foregoing Comments in Support of Rulemaking to be served on the following by U.S. mail, postage prepaid:

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A handwritten signature in black ink, reading "Sandra D. Jeter", written over a horizontal line.